

Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN J. SELKOWITZ, an individual,

Plaintiff,

v.

LITTON LOAN SERVICING LP, a
Delaware Limited Partnership; NEW
CENTURY MORTGAGE
CORPORATION, a California Corporation;
QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON, a
Washington Corporation ; FIRST
AMERICAN TITLE INSURANCE
COMPANY, a Washington Corporation;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., a
Delaware Corporation, and DOE
Defendants 1-20,

Defendants.

NO. 3:10-CV-05523-JCC

JOINT STATUS REPORT

Pursuant to the Court's Minute Order of August 22, 2012, the parties submit the
following Joint Status Report and Discovery Plan.

JOINT STATUS REPORT
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1 **1. NATURE AND COMPLEXITY OF THE CASE.**

2 a. **Plaintiff's Statement:** This is an action was originally brought by Plaintiff,
3 alleging claims for declaratory relief, permanent injunction, wrongful foreclosure, quiet title,
4 violation of the Washington State Consumer Protection Act (*RCW 19.86, et seq.*), and violation
5 of the Federal Fair Debt Collection Practices Act (*15 U.S.C. §§ 1962, et seq.*) This action was
6 initiated on or about July 2, 2010, under King County Superior Court Case No. 10-2-24157-4
7 KNT.

8 On July 27, 2012, Defendant, QUALITY LOAN SERVICE CORPORATION OF
9 WASHINGTON, a Washington Corporation (hereinafter "Quality Loan"), removed this action,
10 pursuant to *28 USC 1332, 1441 and 1446*. Dkt 1. No other named Defendant has formally
11 joined in the removal.

12 On August 6, 2010, Defendant, FIRST AMERICAN TITLE INSURANCE COMPANY,
13 a Washington Corporation (hereinafter "First American") filed a Motion to Dismiss, pursuant to
14 *FRCP 12(b)(6)*. Dkt. 7. A hearing on this Motion was noted for August 27, 2010.

15 On August 12, 2010, Defendants, LITTON LOAN SERVICING LP, a Delaware Limited
16 Partnership (hereinafter "Litton") and MORTGAGE ELECTRONIC REGISTRATION
17 SYSTEMS, INC., a Delaware Corporation (hereinafter "MERS") filed a Motion to Dismiss,
18 pursuant to *FRCP 12(b)*. Dkt. 8. A hearing on this Motion was noted for September 3, 2010.

19 On August 18, 2010, Plaintiff filed an Amended Complaint, alleging claims for,
20 permanent and permanent injunction, wrongful foreclosure, quiet title, defamation of title,
21 malicious prosecution and violation of the Washington State Consumer Protection Act (*RCW*
22 *19.86, et seq.*). Dkt. 9. No Defendant named herein has answered either Plaintiff's Complaint
of July 2, 2010 or his Amended Complaint of August 18, 2010.

1 On August 18, 2010, Plaintiff filed a Motion for Remand, pursuant to the provisions of
2 28 USC 1441(b), based upon Plaintiff's Amended Complaint. Dkt 14. A hearing on this Motion
3 was noted for September 3, 2010.

4 On August 18, 2010, Plaintiff filed a Motion for Temporary Restraining Order, pursuant
5 to RCW 61.24.130. Dkt 13. A hearing on this Motion was noted on shortened time for August
6 26, 2010.

7 On August 31, 2010, the Court granted the Motions to Dismiss of First American, Litton
8 and MERS. The Court also denied Plaintiff's Motions for Temporary Restraining Order and
9 Remand. Dkt. 22.

10 On September 3, 2010, Quality Loan filed a Motion to Dismiss, pursuant to FRCP
11 12(b)(6). Dkt 24. A hearing on this Motion was noted for October 1, 2010.

12 On September 27, 2010, Plaintiff filed a Motion to Amend the Judgment to seek
13 reconsideration of the Court's Order of August 31, 2010, pursuant to FRCP 59(d). Dkt. 25. A
14 hearing was noted on this Motion for October 4, 2010.

15 On October 6, 2010, the Court entered an Order staying all proceedings in this matter
16 and ordering the parties to show cause why the Court should not submit the issue of whether
17 MERS is an "authorized beneficiary" under RCW 61.24, et seq. Dkt. 26.

18 On June 27, 2011, the Court certified three questions to the Washington Supreme Court,
19 pursuant to RCW 2.60.020:

20 A. Is Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS"),
21 a lawful "beneficiary" within the terms of Washington's deed of Trust Act, RCW
22 61.24.005(2), if it never held the promissory note secured by the deed of trust?

21 B. If [not], what is the legal effect of MERS acting as an unlawful beneficiary
22 under the terms of Washington's Deed of Trust Act?

1 C. Does a homeowner possess a cause of action under Washington's
2 Consumer Protection Act against MERS, if MERS acts as an unlawful beneficiary
under the terms of Washington's Deed of Trust Act?

3 On August 16, 2012, the Washington Supreme Court answered each of the foregoing
4 questions as follows:

5 Under the deed of trust act, the beneficiary must hold the promissory note
and we answer the first certified question 'no.' We decline to resolve the second
6 question. We answer the third question with a qualified 'yes,' a CPA action may
be maintainable, but the mere fact that MERS is listed on the deed of trust as a
7 beneficiary is not itself an actionable injury.

8 This matter has now been remanded back to this Court and the Court has lifted the stay
entered October 6, 2010. Dkt. 50.

9 Given the Washington Supreme Court's refusal/inability to resolve the second question
10 certified by this Court, this case will remain an extremely complex case.

11 **b. Defendants' Statement:** Defendants do not believe the Supreme Court's
12 opinion materially changes the prior dismissal of Plaintiff's Amended Complaint, and believe
13 this case remains only moderately complex.

14 **2. FILINGS OR PAPERS PROPOSED TO BE STRICKEN**

15 **a. Plaintiff:** At this point in time, Plaintiff does not propose that any filing be
16 stricken.

17 **b. New Century:** N/A.

18 **c. MERS:** MERS does not propose striking any filing.

19 **d. First American:** First American does not propose striking any filing.

20 **e. Quality Loan:** Quality does not propose striking any filing.

21 **f. Litton:** Litton does not propose striking any filing.

1 **3. FILINGS OR PAPERS PROPOSED TO BE AMENDED.**

2 **a. Plaintiff:** Plaintiff intends to again amend its Complaint to re-plead a claim for
 3 violation of Federal Fair Debt Collection Practices Act (*15 U.S.C. §§ 1962, et seq.*) and to assert
 4 a claim for violation of *RCW 9A.82*. Included in this proposed amended complaint may be the
 5 dismissal of one or more of the currently named Defendants. Plaintiff respectfully requests the
 6 Court grant leave to amend his Complaint. Future amendments may be necessary as the identity
 7 of additional of additional parties becomes known through discovery.

8 **b. New Century:** N/A.

9 **c. MERS:** MERS responds that to the extent Plaintiff seeks to again amend his
 10 Complaint, he must first seek relief under *FRCP 60(b)(6)* to obtain relief from the Order
 11 dismissing his claims, and if granted, file a motion for leave to amend. Should Plaintiff file
 12 those motions, MERS will respond accordingly.

13 **d. First American:** First American joins in MERS's comment in the preceding
 14 paragraph.

15 **e. Quality Loan:** Quality will amend its motion to dismiss in the event Plaintiff is
 16 not granted leave to amend his complaint. Otherwise, Quality joins in MERS's comment in the
 17 preceding paragraph "c"

18 **f. Litton:** Litton adopts MERS's statement above.

19 **4. FILINGS OR PAPERS PROPOSED TO BE RE-FILED.**

20 **a. Plaintiff:** Plaintiff intends to revise, re-file and re-note his Motion to Amend the
 21 Judgment seeking reconsideration of the Court's Order of August 31, 2010, pursuant to *FRCP*
 22 *59(d)*, and his Motion for Temporary Restraining Order, pursuant to *RCW 61.24.130*, that were
 pending at the time the Court stayed the proceedings herein. Plaintiff also intends to revise, re-

1 file and re-note his Motion for Remand, based upon Plaintiff's Amended Complaint that remains
2 before the Court. Finally, Plaintiff intends to file and note Motions for Default against each of
3 the named Defendants, in view of their failure to respond to Plaintiff's Amended Complaint.
4 Absent a *sua sponte* decision by the Court to vacate its Order of August 31, 2010, in view of the
5 decision in *Bain v. Metro. Mortgage Group, Inc.*, Nos. 86206-1 & 86207-9, ___ Wn.2d.___, ___
6 P.3d ___ (2012) (WL 3517326), Plaintiff requests a briefing schedule be adopted to provide
7 Plaintiff no less than 30 days to revise, re-file and re-note his Motions.

8 **b. New Century: N/A.**

9 **c. MERS:** MERS responds that the proper procedure for Plaintiff to pursue relief
10 from the prior Orders claims is under FRCP 60(b)(6), rather than Rule 59. There is no operative
11 Complaint pending (because of the dismissal), and thus there is no Complaint to Answer and
12 nothing to remand. Further, MERS responds that Plaintiff's representation that he intends to add
13 federal claims is contrary to his above allegation that he intends to seek remand. Should the
14 Court grant a motion for relief from any of the prior Orders, MERS expects it will timely file a
15 new motion to dismiss. Finally, MERS responds that Plaintiff may not file any default motion
16 without first obtaining relief from the prior order of dismissal and then complying with the
17 notice requirements *LR 55(a)*.

18 **d. First American:** First American joins in MERS's comments set forth in the
19 preceding paragraph. Specifically, First American expects it will also file a new motion to
20 dismiss should Plaintiff obtain relief from the August 31, 2012, order (Docket No. 22)
21 dismissing First American from the lawsuit.
22

1 **e. Quality Loan:** Quality joins in MERS's comments set forth above in paragraph
2 "c". Further, Quality likewise expects it will file an amended motion to dismiss should Plaintiff
3 obtain relief from the August 31, 2012 order (Docket No. 22)

4 **f. Litton:** Litton adopts MERS' statement above.

5 **5. DISCOVERY PLAN.**

6 **a. Rule 26(f) conference and Rule 26(a) Initial Disclosures.** No discovery has
7 been conducted in this matter to date. No initial disclosures or discovery conferences, pursuant
8 to *FRCP 26(a) and (f)*, has been conducted in connection with this matter to date.

9 **b. Plaintiff.** A date should be set for the parties to provide initial disclosures and
10 engage in a discovery conferences, pursuant to *FRCP 26(a) and (f)*. Discovery issues include,
11 without limitation, the existence and extent of the subject debt owed to these Defendants, the
12 source of authority for Defendants to declare a default on the subject obligation (*RCW*
13 *61.24.030*) and MERS authority, if any, in assigning the subject Note and Deed of Trust and the
14 appointment of a successor trustee (*RCW 61.24.010*), the consideration, if any, paid for the
15 assignment and the identity of the entity who paid said consideration, the identity of the true
16 owner and "holder" of the subject Note (*RCW 61.24.030(7)*), and the current location of the
17 subject Note. No limitations in discovery should be imposed on discovery. Given the
18 probability that Defendants will attempt to impose limitation on discovery or interpose
19 objections, it would be prudent to consider the appointment of a discovery masters. Otherwise,
20 discovery should be managed in accordance with Federal and Local Civil Rules. There is no
21 current basis to impose protective orders at the outset of discovery, pursuant to *FRCP 26(c)*. It
22 would be advisable to require a Joint Status Report at the conclusion of discovery to review the
efficacy of ADR, pursuant to *CR 16*. Given the current status of discovery, the potential

difficulties in locating relevant witnesses and the potential difficulties in obtaining documentary evidence from some of the corporate defendants and their agents, Plaintiff requests discovery be concluded no earlier than seven (7) weeks of trial.

c. **New Century:** N/A.

d. **MERS:** MERS responds that it will attend a Rule 26(f) conference and provide initial disclosures by whatever deadline is set by the Court as a result of this Joint Status Report. Because there are no claims currently pending before the Court, MERS objects to any discovery at this time. Should the Court permit relief from prior Orders, MERS expects it will move to dismiss the Complaint again. MERS will respond to any timely discovery requests as permitted by the Federal Rules of Civil Procedure, including seeking a protective order under *FRCP 26* as necessary. MERS further responds that no discovery master is appropriate at this time because there are no claims or discovery requests currently pending.

e. **First American:** First American joins in MERS's comments in the preceding paragraph.

f. **Quality Loan:** Quality joins in MERS's comments in the preceding paragraph "c".

g. **Litton:** Litton adopts MERS' statement above.

6. BIFURCATION.

a. **Plaintiff:** This matter should not be bifurcated.

b. **New Century:** N/A.

c. **MERS:** MERS does not seek bifurcation at this time.

d. **First American:** First American does not seek bifurcation at this time.

e. **Quality Loan:** Quality does not seek bifurcation at this time.

1 **f. Litton:** Litton does not seek bifurcation.

2 **7. SIMPLIFYING THE CASE.**

3 **a. Plaintiff:** Plaintiff believes ADR could be helpful in negotiating a modification
4 of the underlying debt and settling the issues before the Court. This matter should not be
5 bifurcated. ADR would be most effective if conducted within two (2) weeks of completion of
6 discovery.

7 **b. New Century:** N/A.

8 **c. MERS:** MERS believes that, should the Court permit this action to proceed,
9 mediation is the best form of ADR, and should take place after dispositive motions are ruled
10 upon and discovery is complete.

11 **d. First American:** First American believes that mediation would be an
12 appropriate method for resolving this lawsuit and should be conducted after completing
13 discovery and rulings on dispositive motions.

14 **e. Quality Loan:** Quality joins in MERS's and First American's statements in the
15 preceding paragraphs "c" and "d"

16 **f. Litton:** Litton does not believe that ADR is necessary to negotiate a modification
17 of the debt and settle the issues before the Court. In the event that this Court orders ADR, Litton
18 believes that it is only appropriate after dispositive motions are ruled upon and discovery is
19 complete. Further, any ADR process must proceed with Litton counsel only, and not with the
20 presence of a Litton representative.

21 **8. ANTICIPATED TRIAL DATE.**

22 **a. Plaintiff:** Plaintiff requests this matter be set for trial no earlier than on
December 16, 2013, at 1:30 p.m.

1 **b. New Century: N/A.**

2 **c. MERS:** Because there are no claims currently pending, and Plaintiff represents
3 that he expects to seek leave to amend the Complaint should the Court grant relief from prior
4 orders, MERS requests that any trial date occur approximately 15 months from now. This will
5 allow three months to rule on any motions from Plaintiff, nine months of discovery, as need be,
6 three months for ruling on dispositive motions, and three months to prepare for trial, if need be.

7 **d. First American:** First American joins in MERS's comments in the preceding
8 paragraph.

9 **e. Quality Loan:** Quality joins in MERS's comments in the preceding paragraph
10 "c"

11 **f. Litton:** Litton adopts MERS's position above.

12 **9. LENGTH OF TRIAL.**

13 **a. Plaintiff:** This is a non-jury case. Trial in this matter should take approximately
14 5 days.

15 **b. New Century: N/A.**

16 **c. MERS:** MERS expects that this case can be tried in 3-5 days.

17 **d. First American:** First American expects this case can be tried in 3-5 days.

18 **e. Quality Loan:** Quality expects that this case can be tried in 3-5 days.

19 **f. Litton:** Litton expects that this case can be tried in 3-5 days.
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21
22

1 **10. ADDRESSES OF TRIAL COUNSEL.**

2	For Plaintiff:	KOVAC & JONES, PLLC. Richard Llewellyn Jones 2050 – 112th Ave. N.E. Bellevue, WA 98004 (425) 462-7322 Fax (424) 450.0249 rlj@kovacandjones.com rlj@richardjoneslaw.com
6	For Litton:	HOUSER & ALLISON Charles T. Meyer and Robert W. Norman 9970 Research Dr. Irvine, CA 92618 (949) 679-1111 cmeyer@houser-law.com
9	For New Century	N/A
10	For Quality Loan	McCARTHY & HOLTHUS Mary Stearns 19735 10 th Ave., N.E., Suite N200 Poulsbo, WA 98370-7478 (206) 319-9100 mstearns@mccarthyholthus.com
14	For First American	BISHOP WHITE MARSHALL & WEIBEL, P.S. Kennard M. Goodman Ann T. Marshall 720 Olive Way, Suite 1301 Seattle, WA 98101 (206) 622-5306 Fax: (206) 622-0354 kgoodman@bwm.legal.com amarshall@bwmlegal.com

For MERS

DAVIS WRIGHT TREMAINE
Fred Burnside and Hugh McCullough
1201 Third Ave., Suite 2200
Seattle, WA 98101-3045
(206) 757-8016
Fax (206) 757-7016
fredburnside@dwt.com
hughmccullough@dwt.com

11. SCHEDULING CONFERENCE. The parties believe that a scheduling conference is necessary prior to entering a scheduling order.

DATED this 19th day of September, 2012.

KOVAC & JONES, PLLC.

HOUSER & ALLISON

By: s/ Richard Llewellyn Jones
Richard Llewellyn Jones, WSBA 12904
Attorneys for Plaintiff

By: s/ Charles T. Meyer
Charles T. Meyer, WSBA 39754
Attorneys for Litton

McCARTHY & HOLTHUS

BISHOP WHITE MARSHALL &
WEIBEL, P.S

By: Mary Stearns
Mary Stearns, WSBA 42543
Attorneys for Quality Loan

By: s/ Kennard M. Goodman
Kennard M. Goodman, WSBA #22823
Attorneys for First American

DAVIS WRIGHT TREMAINE

By: s/ Fred B. Burnside
Fred Burnside, WSBA No. 32491
Attorneys for MERS